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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 VETH K.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C18-5942-BAT

**ORDER REVERSING THE
COMMISSIONER**

13 Plaintiff seeks review of the denial of her application for Disability Insurance Benefits.
14 She contends the ALJ erred in assessing the opinions of several doctors, her subjective
15 testimony, and her son's lay statement, and these errors led to a residual functional capacity
16 ("RFC") determination that does not account for all of her limitations. Dkt. 13. For the reasons
17 below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for
18 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

19 **BACKGROUND**

20 Plaintiff is currently 55 years old, had some high school education in Thailand and had
21 additional sewing training, and has worked in the United States as a seamstress. Tr. 54, 182. In
22 November 2013, she applied for benefits, alleging disability as of April 24, 2013. Tr. 160-66.
23 Her application was denied initially and on reconsideration. Tr. 101-03, 107-11. The ALJ

1 conducted a hearing on January 28, 2016 (Tr. 49-75), and subsequently found Plaintiff not
2 disabled. Tr. 28-39. The Appeals Council denied review making the ALJ's decision the
3 Commissioner's final decision. Tr. 15-20.

4 **THE ALJ'S DECISION**

5 Utilizing the five-step disability evaluation process,¹ the ALJ found:

6 **Step one:** Plaintiff had not engaged in substantial gainful activity since the alleged onset
7 date.

8 **Step two:** Plaintiff's carpal tunnel syndrome, status post surgical repair; shoulder
9 tendinitis; adhesive capsulitis; degenerative disc disease; minimal degenerative joint
10 disease of the wrist; migraine; shoulder impingement; and scapular dyskinesia are severe
11 impairments.

12 **Step three:** These impairments did not meet or equal the requirements of a listed
13 impairment.²

14 **RFC:** Plaintiff can perform light work with additional limitations: she cannot climb
15 ladders, ropes, or scaffolds. She can occasionally climb ramps and stairs, balance, stoop,
16 kneel, and crouch. She can perform work that does not require her to crawl. She can
17 perform work that avoids concentrated exposure to extreme temperatures, hazards, and
18 vibrations. She can occasionally reach overhead bilaterally. She can frequently reach in
19 all other directions, handle, finger, and feel with the left arm. She can occasionally reach
20 in all other directions, handle, finger, and feel with the right arm.

21 **Step four:** Plaintiff cannot perform her past work.

22 **Step five:** As there are jobs that exist in significant numbers in the national economy that
23 Plaintiff can perform, she is not disabled.

Tr. 28-39.

24 **DISCUSSION**

25 **A. Medical evidence**

26 Plaintiff argues the ALJ erred in assessing the medical opinion evidence, specifically the

27 ¹ 20 C.F.R. §§ 404.1520, 416.920.

28 ² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 opinions of examining physicians Nicholas Branting, M.D., and Jonathan Harrison, M.D., and
2 the State agency non-examining medical consultant. Dkt. 13 at 2-10. The Court will address
3 each disputed opinion in turn.³

4 **1. Dr. Branting**

5 Dr. Branting examined Plaintiff in March 2014 and wrote a narrative report describing
6 her symptoms and limitations. Tr. 292-95. The ALJ gave partial weight to Dr. Branting's
7 opinion, finding Plaintiff to be more limited than described by him, in that she had manipulative
8 and postural limitations not referenced by Dr. Branting. Tr. 36.

9 Plaintiff argues that Dr. Branting's opinion is inconsistent with the ALJ's RFC
10 assessment because Dr. Branting documented Plaintiff's complaint of right shoulder pain. Dkt.
11 13 at 3. While Dr. Branting mentions Plaintiff's report of shoulder pain (see Tr. 292, 295), the
12 doctor nonetheless found Plaintiff to be limited in the manner he described. See Tr. 295. As
13 mentioned above, the ALJ found Plaintiff to be more limited than described by Dr. Branting. Tr.
14 36. Plaintiff has failed to show the ALJ's assessment of Dr. Branting's opinion is erroneous.

15 **2. Dr. Harrison**

16 Dr. Harrison examined Plaintiff in June 2016 and completed a narrative report as well as
17 a checkbox form describing Plaintiff's limitations. Tr. 590-600. According to the ALJ, Dr.
18 Harrison did not mention any reaching limitations on Plaintiff's left side in the narrative report,
19 which undermined his opinion in the checkbox form that she was limited to occasional reaching
20 on the left. Tr. 36. The ALJ found the occasional reaching limitations on the left side as

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22 ³ Plaintiff also devotes pages of her brief summarizing other medical evidence, but fails to
23 connect that evidence with a specific error in the ALJ's decision. Dkt. 13 at 4-9. Although
Plaintiff contends this evidence shows her testimony had an objective basis (Dkt. 13 at 5), her
summary of the evidence does not prove the ALJ's assessment of the medical evidence or her
testimony was erroneous.

1 described in the checkbox form were not as well explained and supported as the reaching
2 limitations described in the narrative report, and thus credited the narrative report rather than the
3 checkbox form in that respect. *Id.* Otherwise, the ALJ gave significant weight to Dr. Harrison's
4 conclusions. *Id.*

5 Plaintiff argues the ALJ erred in finding a discrepancy in Dr. Harrison's opinions as to
6 reaching limitations because in the narrative report, he indicated Plaintiff was limited to
7 occasional reaching overhead and forward *bilaterally*, which is not inconsistent with his opinion
8 on the checkbox form that Plaintiff was limited to occasional reaching overhead and in any other
9 direction with the left. Dkt. 13 at 4. The record shows there is a discrepancy between the types
10 of reaching discussed in the doctor's narrative report and the checkbox form: both opinions
11 reference overhead reaching, but the narrative report mentions *forward* reaching and the
12 checkbox form mentions reaching in *all other non-overhead* directions. *Compare* Tr. 593 with
13 Tr. 597. Thus, although Dr. Harrison said in his narrative report Plaintiff could reach *forward*
14 only occasionally bilaterally (and did not opine about directions other than forward or overhead),
15 in the checkbox form he opined Plaintiff could reach in *any direction* occasionally with both
16 right and left. *Id.* The Commissioner mentions Dr. Harrison's narrative report references
17 occasional forward reaching bilaterally, but does not acknowledge this report is inconsistent with
18 the RFC assessment, which indicates Plaintiff could frequently reach in all non-overhead
19 directions with her left side. *See* Dkt. 16 at 4 (citing Tr. 33).

20 Because the ALJ purported to credit Dr. Harrison's narrative report as to the reaching
21 limitations, but did not entirely account for that opinion specifically as to the limitation to
22 occasional forward reaching on the left, the ALJ erred. *See* Social Security Ruling 96-8p, 1996
23 WL 374184, at *7 (Jul. 2, 1996) ("If the RFC assessment conflicts with an opinion from a

1 medical source, the adjudicator must explain why the opinion was not adopted.”). On remand,
2 the ALJ must reconsider Dr. Harrison’s opinions and either credit them, or provide valid reasons
3 to discount them.

4 **3. State agency consultants**

5 Plaintiff argues the ALJ erred in giving partial weight to a State agency opinion because
6 it was not based on an examination and the record was incomplete at the time the record was
7 reviewed. Dkt. 13 at 9. These arguments fail. The ALJ is entitled to consider the opinions of a
8 non-examining doctor. *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (“The
9 opinions of non-treating or non-examining physicians may also serve as substantial evidence
10 when the opinions are consistent with independent clinical findings or other evidence in the
11 record.”). The ALJ also properly considered the entire record before him (rather than only the
12 record before the State agency consultant) when deciding probative value of the State agency
13 opinions, and in fact found the record indicated Plaintiff was more limited than found by the
14 State agency. *See* Tr. 36. Plaintiff has failed to meet her burden to show error in the ALJ’s
15 assessment of the State agency opinion.

16 **B. Plaintiff’s testimony**

17 The ALJ discounted Plaintiff’s testimony alleging disability, finding it inconsistent with:
18 (1) objective medical evidence showing she was less limited than alleged, (2) evidence showing
19 that she did not consistently take medication and/or follow through with treatment
20 recommendations for her headaches, and (3) evidence that she stopped working for reasons
21 unrelated to her impairments and continued to seek jobs. Tr. 34-35. Plaintiff contends these
22 reasons are not clear and convincing, as required by Circuit law. *See Burrell v. Colvin*, 775 F.3d
23 1133, 1136-37 (9th Cir. 2014).

1 Regarding the ALJ's first reason, Plaintiff relies on her contentions discussed in the
2 previous section about the ALJ's assessment of the medical evidence. Dkt. 13 at 10. Although,
3 the Court finds the ALJ misapprehended the full extent of Dr. Harrison's opinion regarding
4 Plaintiff's reaching limitations, Plaintiff has merely alleged but not shown how this error tainted
5 the ALJ's assessment of her own testimony. Further Plaintiff does not address the ALJ's
6 reasoning related to her headache allegations. Dkt. 13 at 10-11.

7 Plaintiff admits she stopped working for reasons unrelated to her impairments and
8 continued to look for work, but contends this fact is not grounds to discount her testimony
9 because her condition worsened since she stopped working. Dkt. 13 at 11. Plaintiff cites no
10 authority for this proposition; the Court thus finds Plaintiff has not met her burden to show the
11 ALJ erred. *See Berry v. Astrue*, 622 F.3d 1228, 1235 (9th Cir. 2010) (affirming an ALJ's
12 discounting of a claimant's testimony where the claimant admitted "that he left his job because
13 his employer went out of business and probably would have worked longer had his employer
14 continued to operate").

15 Because the ALJ provided multiple clear and convincing reasons to discount Plaintiff's
16 testimony, Plaintiff has not shown error in the ALJ's assessment of her allegations.⁴

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20 ⁴ Plaintiff also includes a summary of her testimony in her briefing. Dkt. 13 at 11-15. This
21 summary is untethered to specific legal arguments. Plaintiff suggests in this section and
22 elsewhere in the brief the ALJ erred in finding she was capable of communicating in English.
23 Dkt. 13 at 15, 17; Tr. 37. As noted by the ALJ, Plaintiff participated in the hearing without an
interpreter (Tr. 37), and many of Plaintiff's medical records suggest she also engaged in medical
care without an interpreter. Plaintiff's providers did, on occasion, question whether Plaintiff was
able to read written English sufficiently. *See, e.g.*, Tr. 442, 457. On remand, Plaintiff may
provide further argument to the ALJ regarding her ability to communicate orally and in writing
in English.

1 **C. Lay testimony**

2 Plaintiff's son completed a third-party function report in January 2014. Tr. 187-94. The
3 ALJ discounted Plaintiff's son's report of disabling limitations as inconsistent with the objective
4 medical evidence, showing Plaintiff's condition was only mild to moderate in severity. Tr. 35-
5 36. Plaintiff argues this reasoning is not germane because the ALJ did not identify any medical
6 evidence that actually contradicts Plaintiff's son's description of her limitations. Dkt. 13 at 15-
7 16.

8 The ALJ did, in fact, cite evidence that contradicts Plaintiff's son's statement, however.
9 The ALJ cited a medical report indicating an x-ray and normal examination of Plaintiff's
10 shoulders in January 2014 despite her allegations of pain, and unchanged findings since
11 November 2011, when she was working. Tr. 36 (citing Tr. 321). The ALJ also cited a report
12 describing an MRI of Plaintiff's cervical spine, describing mild and moderate findings. Tr. 447.
13 The ALJ reasonably construed the medical evidence to be inconsistent with Plaintiff's son's
14 description of disabling physical limitations, and did not err in discounting his statement on that
15 basis. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (affirming an ALJ's
16 rejection of claimant's family members' statements based on inconsistency with medical
17 evidence).

18 **CONCLUSION**

19 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is
20 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).
21 On remand, the ALJ shall reconsider Dr. Harrison's opinions, develop the record and
22 redetermine Plaintiff's RFC as needed, and proceed to the remaining steps as appropriate.
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1 Plaintiff may provide further evidence or argument to the ALJ regarding her ability to
2 communicate orally and in writing in English.

3 DATED this 11th day of September, 2019.

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6 BRIAN A. TSUCHIDA
7 Chief United States Magistrate Judge
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